HONOURABLE SRI G.S.SINGHVI

THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE

G.BHAVANI PRASAD

–

WRIT APPEAL No. 2368 OF 2005

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Between:

The Kurnool Municipal Corporation

Kurnool, represented by its Commissioner.

… Appellant

And

St. Joseph's Educational Society,

Kurnool represented by its Secretary

and Treasurer, C.Rojamma

W/o late Chittaranjan and another.

… Respondents

::JUDGMENT::

Counsel for appellant : Sri Khaja Moizuddin

Counsel for respondent No.1 : Sri M.V.S.Suresh Kumar

Counsel for respondent No.2 : Government Pleader

for Revenue

24th January, 2006

Per G.S.Singhvi, C.J.

This appeal by the Kurnool Municipal Corporation is directed against order dated 9.6.2005 passed in Writ Petition No. 2231 of 2005 whereby the learned Single Judge gave liberty to the writ petitioner (respondent No.1 herein) to file an application for grant of permission for construction of building over land measuring

Ac.1.25 cents situated in Survey No. 140/2A, Kurnool and directed the appellant to decide the same without insisting on the production of 'No Objection Certificate' from District Collector, Kurnool (respondent No.2).

Respondent No.1 is a registered society. It purchased the land in question from the legal representatives of
late Sri K. Lakshman Rao vide registered sale-deed dated
5-3-2004. After purchasing the land, respondent No.1 submitted application dated 6-7-2004 seeking permission for construction of building of a primary school. The appellant returned the application with the remark that respondent No.1 should obtain clarification from respondent No.2 regarding ownership of the land because Mandal Revenue Officer, Kurnool had certified that the site is 'Village Poramboke'.

Respondent No.1 challenged the aforementioned action of the appellant by filing Writ Petition No.2231 of 2005. It pleaded that in the face of order dated 31-8-1989 passed by District Judge-cum-Special Tribunal (for short 'the Special Tribunal') in Original Petition No.107 of 1984 filed by Tahsildar, Kurnool under Section 8 of the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act'), the appellant cannot indirectly decline permission for construction on the pretext of want of clarification from respondent No.2 regarding ownership of the site.

The appellant contested the writ petition by asserting that in terms of Section 429 (1) (a) of the Andhra Pradesh Municipalities Act, 1965, respondent No.1 was rightly called upon to produce documents in support of its entitlement to construct building on the land in question. According to the appellant, Mandal Revenue Officer, Kurnool had classified the land as 'Village Poramboke' and, therefore, clarification was sought from the District Collector regarding ownership of the land.

The learned Single Judge referred to order dated
31-8-1989 passed by the Special Tribunal as also the judgment of this Court in **Hyderabad Potteries Private Limited v. Collector, Hyderabad** and held that the appellant was not justified in refusing building permission on the pretext that the Mandal Revenue Officer had certified the land as 'Village Poramboke'. On that basis, the learned Single Judge disposed of the writ petition in the following terms:

> "Accordingly, the writ petition is disposed of granting liberty to the petitioner to re-submit the application within a period of two weeks from today, in which event the 1st respondent is directed to consider the same in the light

of the finding recorded in O.P.No.107 of 1984 dated 31-8-1989 on the file of the District Court–cum-Special Tribunal under the A.P. Land Grabbing (Prohibition) Act and without insisting on production of No Objection Certificate from the 2nd respondent and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order."

Shri Khaja Moizuddin, learned counsel for the appellant argued that the direction given by the learned Single Judge should be declared as vitiated by an error of law because while dispensing with the requirement of 'No Objection Certificate', the court overlooked the fact that the land in dispute has been classified as 'Village Poramboke' and respondent No.1 does not have any legal or vested right over such land. He submitted that the finding recorded by the Special Tribunal cannot operate as a bar to the raising of dispute regarding title of the property.

Learned counsel for respondent No.1 supported the order of the learned Single Judge and argued that in view of the finding recorded by the Special Tribunal, the appellant could not have indirectly declined permission for construction of building. He also referred to order dated 30-8-2005 passed in Writ Petition No.8712 of 2005 to show that the action taken by Revenue Divisional Officer, Kurnool for cancellation of certificate dated 19-6-2004 issued by Mandal Revenue Officer, Kurnool recognizing respondent No.1 as owner of the property has been nullified by this Court.

We have considered the respective submissions and carefully perused the record. Although the documents filed with the writ petition do suggest that there was some controversy about the status of the land in question, but in our opinion, the learned Single Judge did not commit any error when she directed the appellant to consider the application of the petitioner without insisting on the production of 'No Objection Certificate' from District Collector. A reading of the order dated 31-8-1989 passed by the Special Tribunal in O.P.No.107 of 1984 shows that Tahsildar, Kurnool had sought eviction of the predecessor of respondent No.1 by claiming that the land in question was village poromboke and it was being unauthorisedly occupied. This was negated by the Special Tribunal by recording the following observations:

"Therefore, it is clear from these circumstances that even by 1940 when the street survey was done in Kurnool town the predecessors of the respondents were in possession of the disputed land in their own right. Even P.W.1 has admitted during his evidence that he has not verified whether all the available

adangals will show only the names of the respondents and their family members as occupiers relating to the disputed land. Therefore, the petitioner is not even able to deny the contention of the respondents that themselves and their predecessors-in-title have been in exclusive possession and enjoyment of the disputed land since times immemorial. As a matter of fact, the petitioner is not able to say as to when the respondents or their predecessors have come into possession of the disputed land. On the other hand, the evidence of R.W.1 and the other evidence placed on record clearly shows that the respondent sand their predecesors have been in exclusive and uninterrupted possession of the disputed lands since times immemorial in their own right. The respondents have also filed Ex.B.7 which consists of 15 demand notices issued by the Kurnool Municipality for the tax levied on the disputed vacant site which is still considered as agricultural land as crops are being raised therein. These demand notices relate to the period from 1955 to 1967. All these demand notices for property tax are issued relating to the disputed site for which separate assessment number is given describing the tax as levied on agricultural site. On the reverse of each of these demand notices the house number is shown. From this circumstance the learned Government Pleader has tried to argue that these demand notices relate to the residential houses of the respondents and not to the disputed land. But this contention cannot be accepted. R.W.1 has asserted during his evidence that in the first page of each of these demand notices the assessment number for the disputed land which is an agricultural land is mentioned and that the door number of their house is mentioned in the second page of all the notices only for the purpose of identification. There appears to be any amount of truth in this contention of R.W.1. This is clear from the specific description of the assessment number in page No.1 of each of these demand notices wherein it is mentioned as agricultural land and while describing the assessment number. Therefore, these demand notices filed on behalf of the respondents also show that the respondents and their predecessors have been in exclusive possession and enjoyment of the disputed land in their own right. In view of these circumstances, the respondents cannot be considered as

'land grabbers' as contemplated under the provisions of the A.P. Land Grabbing (Prohibition) Act.

It is clear from a perusal of the various provisions of A.P. Land Grabbing (Prohibition) Act, 1982 and the statement of objects and reasons for the passing of the said Act by the Government that the said Act was passed by the Government only with a view to deal effectively with persons who try to encroach and occupy the lands of the Government or other institutions or private persons by force or in an unauthorized manner and try to grab such lands by entering into fraudulent sales through unscrupulous real estate dealers or otherwise. 'Land Grabber' is defined in Section 2 (d) of the Act as a person or a group of persons who commits 'land grabbing' as defined in the Act. 'Land grabbing' is defined in Section 2 (e) of the Act as every activity of grabbing of land by a person or group of persons without any lawful

> entitlement and with a view to illegally taking possession of such lands or enter into or create illegal transactions. Section 17-B of the Act provides that the 'schedule' given in the Act shall constitute the guidelines for the interpretation and implementation of the Act. The 'schedule' mentioned in the Act consists of the statement of objects and reasons to the A.P. Land Grabbing (Prohibition) Bill, 1982. A perusal of the said 'schedule clearly shows that the Act was intended to be passed by the Government only with a view to deal effectively with the organized attempts on the part of certain lawless persons operating individually and in groups to grab either by force or by deceit or otherwise lands belonging to the Government or other institutions or private persons. The said 'schedule' has to be kept in view while interpreting and implementing the provisions of the A.P. Land Grabbing (Prohibition) Act as specifically stated in Section 17-B of the Act. The evidence placed in the present petition which is already referred to above clearly shows that none of the respondents can be considered as 'Land grabbers' as defined in the Act and that, on the other hand, they and their predecessors have been asserting their right and title to the disputed land since time immemorial and are in exclusive possession and enjoyment of the same eversince then."

The Special Tribunal then referred to the judgments of the Supreme Court in **Government of A.P. v. T. Krishna Rao** and of this Court in **The Special Deputy Collector v. Konda Lakshman Bapu** and observed that the dispute regarding the title of the property has to be adjudicated by the ordinary court of law and the government cannot unilaterally decide the same.

Admittedly, the State Government and Tahsildar, Kurnool did not challenge the order of the Special Tribunal. Therefore, the same will be deemed to have become final and the functionaries of the appellant could not indirectly question the same and rake up the dispute regarding title of the property. Remedy, if any available to the State Government and its functionaries was to file civil suit for adjudication of dispute regarding title of the property in question.

In view of the above, it must be held that the application filed by the respondent for grant of permission to raise construction could not have been rejected on the ground of non-submission of 'No Objection Certificate' from District Collector and the learned Single Judge did not commit any error by directing fresh consideration of the application of the writ petitioner.

Before concluding, we deem it proper to mention that Mandal Revenue Officer, Kurnool had issued certificate dated 19-6-2004 in favour of respondent No.1 that it had purchased the land in question. The same was cancelled by Revenue Divisional Officer, Kurnool vide his order dated 13-4-2005, but that order was set aside by this Court in Writ Petition No.8712 of 2005 decided on 30-8-2005. The relevant extract of that order is reproduced below:

> "The order passed by the Land Grabbing (Prohibition) Court reached finality since the Government did not choose to question the same and it can be said without any controversy that K. Lakshman Rao Naidu was held to be in possession of the property over a statutory period and he could not be considered as encroacher. The petitioner society claimed that it purchased property from the legal representatives of K. Lakshman Rao Naidu under the registered document. The Revenue Divisional Officer while setting aside the possession certificate proceeded to order for restoration of the possession in spite of the fact that a specific finding had been recorded by the Land Grabbing (Prohibition) Court that K. Lakshman Rao was not an encroacher and he was in possession over a statutory period. The recourse resorted by the Revenue Divisional Officer in ordering restoration is not in accordance with the law and the same is liable to be set aside."

For the reason mentioned above, the appeal is dismissed.

G.S.SINGHVI, C.J.

24.1.2006.

G.BHAVANI PRASAD, J.

VR / svs